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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2006

CORAM

THE HONOURABLE MR.JUSTICE.P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE.M.JAICHANDREN

L.P.A.NO.66 of 2002

M/s. N.Gopala Iyer Firm,
rep.by its partner,
V.Raghunathan ... Appellant (Plaintiff)

-vs-

1. State of Tamil Nadu,
rep.by the District,
Collector, Thanjavur.

2. The Tamil Nadu Civil
Supplies Corporation Ltd,
rep.by its Managing Director,
a company registered under the
Indian Co.Act, with its
Head Office at 14,
Thambusamy Road,
Kilpauk, Madras - 10

3. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation Ltd,
Thanjavur Regional Office,
Gandhiji Road, Thanjavur ... Respondents

For appellant : Mr.P.Rajagopal
For R-1 : Mr.V.Srikanth, AGP for R1
For R-2 : Ms.V.J.Latha, for R2
For R-3 : No appearance

Prayer : The present Letters Patent Appeal has been preferred against the judgment and decree of the learned single Judge, dated 08.08.2001, made in A.S.No.366 of 1984, confirming the judgment and decree, dated 28.06.1983, made in O.S.No.10 of 1982, on the file of the Sub-ordinate Judge, Nagapattinam.

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J U D G M E N T

M.JAICHANDREN.J

The present Letters Patent Appeal has been preferred against the judgment and decree of the learned single Judge, dated 08.08.2001, made in A.S.No.366 of 1984, confirming the judgment and decree, dated 28.06.1983, made in O.S.No.10 of 1982, on the file of the Sub-ordinate Judge, Nagapattinam.

2. It is the case of the appellant firm that it had filed a suit O.S.No.10 of 1982, on the file of the sub-ordinate Judge, Nagapattinam praying to pass a decree in favour of the plaintiff for the following reliefs:-

> " a) for a declaration that the demand calling on the plaintiff to deposit rice & paddy as per the third defendant's notice, dated 01.09.1980, is not enforceable and the security is discharged.
>
> b) for a decree directing the defendants to return the National Saving Certificate Bonds described in Schedule 'A' hereunder to the plaintiff duly discharged of all security pledged to the defendants or in the alternative for a decree for payment of Rs.35,250/- towards the value of the certificates;
> c) for a decree directing the defendants to pay interest at 16% p.a.from 01.04.1980 on the sum of Rs.35,250/- the amount the use of which the plaintiff had lost.
> d) and also be pleased to award costs of this suit in favour of the plaintiff and also be pleased to grant such other and further reliefs as the Honourable Court may deem fit and proper in the circumstances of the case "

3. It is the case of the plaintiff in the above mentioned suit and the appellant herein that the plaintiff was running a rice mill under the name "Sri Thyagaraja Rice Mill" at Koradacheri and it was appointed as a hulling agent by the District Revenue Officer,Thanjavur, from 26.03.1973, under the control of the Tamil Nadu Civil Supplies Department. Since the appointment of the plaintiff as an agent was for one year, it was re-appointed as a hulling-cum-procuring agent by the Tamil Nadu Civil Supplies Corporation Limited and continued as such till the end of the year 1979.

4. It is the further case of the plaintiff / appellant that at the time of being appointed as a hulling agent in the year 1973, it had furnished a security deposit of Rs.25,000/- by way of National Savings Certificate Bonds. On the re-appointment of the plaintiff as a hulling-cum-procuring agent in the year 1974, the security deposit was transferred to the Tamil Nadu Civil Supplies Corporation Limited, the second respondent in the present appeal, and who was the second defendant in the original suit.

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5. The plaintiff/appellant received the paddy allotted by the defendants by order or the paddy was procured under the supervision of the defendants and it was being despatched to various destinations as per the orders issued by the defendants/respondents from time to time. Periodical bills were raised by the plaintiff / appellant for the hulling process and for other charges and the final bills were prepared by the defendants for every season adjusting the amounts due from the plaintiff. The plaintiff mill has been discharging its duties as a hulling-cum-procuring agent diligently and without any default . All the paddy and rice in the plaintiff's custody have been accounted for and final bills for all the years have been passed by the second defendant in the suit, namely, the Tamil Nadu Civil Supplies Corporation Limited. On 17.10.1979, the stock of paddy and rice became 'nil' and the last and final bill was passed and payment made to the plaintiff on 29.01.1980. The work-sheet prepared by the defendants for the final bill of every year showed that the entire stock with the plaintiff mill had been accounted for. All the amounts alleged as recoverable from the plaintiff, as per the claims made by the defendants, have been deducted and recovered from the plaintiff and the same had been adjusted in the final bill and the balance due had also been paid by the plaintiff.

6. The plaintiff had further submitted that on the passing of the last and final bill on 29.01.1980, the plaintiff's security deposit ought to have been returned in full. On the contrary, the defendants had not done so. Inspite of the plaintiff requesting for the return of the National Savings Certificate Bonds, the third defendant had sent a communication R.C.21472/80/39, dated 01.09.1980, stating that the plaintiff had to deposit an alleged shortage of 11.43 kilos of first sort boiled rice and 233.44 quintals of second sort boiled rice and 0.23 kilograms of third sort boiled rice in kind and the sum of Rs.32,980.07/- which had already been recovered will be adjusted for other recoveries and the balance will be refunded after remittance in kind. Inspite of the plaintiff making various representations to the defendants to show that the value of alleged shortages had already been recovered, the defendants neither returned the Security Deposit Certificate nor furnished any particulars of any other dues recoverable from the plaintiff. The third defendant by his reply notice, dated 16.10.1980, had stated that the refund of the security deposit would be considered only after the plaintiff makes good the shortages alleged as due to the second defendant Corporation. Therefore, the plaintiff had filed the suit O.S.No.10 of 1982.

7. It is further submitted by the plaintiff / appellant that the Tamil Nadu Civil Supplies Corporation Limited had filed a separate suit in O.S.No.39 of 1984, in the court of the sub-ordinate Judge, Nagapattinam, praying for the grant of a decree in favour of the plaintiff therein for the suit amount. The amount claimed by the Tamil Nadu Civil Supplies Corporation in the said suit O.S.No.39 of 1984, was Rs.98,055.05/-. In paragraph 10 of the plaint filed in the said suit, it has been stated by the plaintiff therein, viz., Tamil Nadu Civil Supplies Corporation Ltd., that the suit filed by the appellant mill O.S.No.10 of 1982, had been dismissed by a judgment and decree, dated 28.06.1983. Thereafter, no further appeal had been filed against the said judgment and therefore, the

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judgment passed in O.S.No.10 of 1982, on 28.06.1983, had become final. The Tamil Nadu Civil Supplies Corporation Ltd, as stated in the written statement filed in O.S.No.10 of 1982, reserved its right to claim the amount due from the mill by way of filing a separate suit. As a consequence, O.S.No.39 of 1984, had been filed.

8. The agreement between the plaintiff and the first defendant, dated 26.03.1973, has been filed as Ex.A-7 in which it is stated in clause 24 as follows :-

> " any amount falling due to government from the hulling agent on account of delivery of rice/quality cut amounts/pool price differential cost etc., shall be adjusted from the security deposit amount remitted by the miller/hulling agent and if the security deposit is found inadequate to cover the dues, it shall be recoverable as arrears of Land Revenue under the Madras Revenue Recovery Act."

9. It is also pointed out that the suit filed by the Tamil Nadu Civil Supplies Corporation Ltd in O.S.No.39 of 1984 had been dismissed and against which an appeal in A.S.No.423 of 1989 had been filed before the learned single Judge of this court. Further, an appeal in A.S.No.366 of 1984, had been filed by the appellant mill against the judgment and decree, dated 28.06.1983, dismissing the suit O.S.No.10 of 1982, both the appeals had been taken up for hearing by the learned single Judge of this court and a common judgment has been pronounced on 08.08.2001, against which the present Letters Patent Appeal No.66 of 2002 has been filed. After adverting to the facts of the case and the averments of the parties concerned, the learned single Judge has held as follows :-

> " 34. Both the above suits have been properly considered at the appropriate points of time when the suits were filed and this court is unable to find any legal infirmity or inconsistency having crept into the judgments and decrees respectively passed in both the said suits by the lower court, nor is there any procedural failure, so as to hold that such a decision could not be made on account of such procedural flaw resulting in failure of justice, and therefore, this court is of the firm view that the lower courts have properly traced the facts and circumstances of the case, as projected by parties and having framed proper issues and conducting the trial in the manner required by law, have arrived at valid conclusions to hold that both the suits filed in O.S.No.10/82 and O.S.No.39/84 deserve only to be dismissed and they are dismissed accordingly on merits and in accordance with law. Therefore, the interference of this court sought for to be made on the part of both the appellants in the above two appeal suits, is neither necessary nor called for, in the circumstances of the case.
>
> In result, both the above appeal suits in A.S.No.366/84 and A.S.No.423/89 fail and they are dismissed thereby confirming the judgments and decrees rendered in O.S.Nos.10/82 and 39/84 respectively dated

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28.06.1983 and 24.03.1988 by the court of Subordinate Judge, Nagapattinam."

10. Against the said judgment passed by the learned single judge of this Court, on 08.08.2001, the present Letters Patent Appeal has been preferred on various grounds stating that the learned single Judge had dismissed the appeal A.S.No.366 of 1984, notwithstanding the fact that, he has also dismissed the appeal A.S.No.423 of 1989. It has also been stated by the appellant that the basis of the claim of the plaintiff is that , the plaintiff mill had discharged its entire liability arising out of the hulling agreements and therefore, it is entitled to have the Security Deposit and the National Saving Bond Certificates returned.

11. It is also submitted by the appellant herein that D.W.1 has clearly admitted in his evidence that the sum of Rs.32,980.07/- mentioned in Exhibit A-1 has also been recovered as per Exhibits B-4 to B-10 and that being so, there cannot be other recoveries towards which the security deposit could be adjusted.

12. The appellant herein had filed the suit O.S.No.10 of 1982, against the Tamil Nadu Civil Supplies Corporation Ltd., for return of the National Savings Certificate Bonds stating that there was no liability on the part of the plaintiff mill to be discharged. The said suit had been dismissed by the trial Court, by its judgment, dated 28.06.1983, and therefore, A.S.No.366 of 1984 came to be filed by the appellant herein and the learned single Judge of this Court by a judgment and decree, dated 08.08.2001, had confirmed the judgment of the trial court and dismissed the appeal by a common judgment. The Learned single Judge had observed that the trial Court was right in dismissing the claim of the appellant/plaintiff holding that there was no legal infirmity or legal inconsistency in the judgment and decree passed by the trial Court. While that being so, the learned single judge has also found it fit to dismiss the appeal filed by the Tamil Nadu Civil Supplies Corporation Ltd., A.S.No.423 of 1989, filed against the dismissal of its claim by the trial Court by its judgment and decree, dated 24.03.1988, made in O.S.No.39 of 1984.

13. The dismissal of both the appeals filed by the rival claimants in A.S.No.366 of 1984 and A.S.No.423 of 1989 cannot be accepted, since one of the claimants should be in a position to sustain the claim. From the facts and circumstances of the case, it is noted that the present Letters Patent Appeal has been filed by the appellant mill against the common judgment of the learned single judge, dated 08.08.2001. However, the Tamil Nadu Civil Supplies Corporation Ltd., whose appeal, A.S.No.423 of 1989 was also dismissed by the common judgment of the learned single judge, dated 08.08.2001, has not preferred an appeal before this Court. Accordingly, it is presumed that the Tamil Nadu Civil Supplies Corporation Ltd., the respondents herein have accepted the decision rendered by the learned single Judge, which had become final.

14. In such circumstances, we are of the view that there has been sufficient evidence on record before the trial Court to sustain the claim of the appellant mill that the shortages of paddy and rice alleged by the respondent Corporation had been compensated for, while settling the final

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bills periodically and there is nothing shown by the respondent Corporation to prove their claim that there were further amounts due from the appellant as alleged.

15. In view of the findings in A.S.No.423 of 1989 which has become final, since no appeal has been filed thereon, and based on the fact that the amounts relating to the shortages in the commodities have been adjusted at every stage in the concerned bills, there cannot be any valid reason for withholding the security deposit as the liability stands discharged and the National Savings Certificates described in Schedule-A of the plaint in O.S.No.10 of 1982 is directed to be returned by the respondents to the appellant herein, without insisting on the appellant making any further payments to the respondents as claimed by them. Therefore, for the reasons stated above, the Letters Patent Appeal stands allowed to the extent indicated above. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge,
Nagapattinam

2. The Sub Assistant Registrar,
Judicial Department,
High Court, Chennai.

1 cc To Mr.P.Rajagopal, Advocate, SR.40703.
1 cc To Mr.V.J.Latha, Advocate, SR.40971.

L.P.A.NO.66 of 2002

PV(CO)
RVL 30.10.2006

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